

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

KAHALA FRANCHISE CORPORATION)	
A Delaware corporation,)	
Plaintiff,)	
)	
vs.)	Case No. 08 CV 4750
)	
NABIL MAKHAMREH, Individually,)	Judge: DOW, JR.
MATTHEW CHEESESTEAK, Inc.,)	
an Illinois Corporation, and M & S)	Magistrate: JUDGE BROWN
CHEESESTEAK, INC. , a Virginia)	
corporation.)	
Defendants.)	

**MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION**

NOW COMES Plaintiff, KAHALA Franchise Corporation ("KAHALA"), by and through its attorney, Gregory J. Ellis, Esq., Ltd., and respectfully moves this Court for entry of a Temporary Restraining Order and Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure and states as follows:

1. Plaintiff requests that this Court issue a Temporary Restraining Order and Preliminary Injunction Order:

A. Enjoining Defendants from conducting a substantially similar restaurant business during the term of the existing Franchise Agreements pursuant to the Non-Compete provisions at ¶15 and ¶14.5 of the Franchise Agreements attached to the Complaint as Exhibits "A" and "B".

2. The grounds for this Motion are set forth in the Verified Complaint and the Memorandum of Law In Support of the Motion for a Temporary Restraining Order and incorporated by reference herein.

3. As stated in the Verified Complaint, KAHALA believes that the Defendants, KAHALA Great Steak and Potato (hereinafter "GSP") franchisees, have breached and

caused to be breached their Covenant Not-To-Compete with KAHALA by operating a substantially similar restaurant of a competitor, during the term of their Franchise Agreements with KAHALA.

4. For the reasons set forth in the Verified Complaint, unless said Defendants are enjoined from engaging in such activity, KAHALA will suffer irreparable harm because Defendants are breaching the In-Term Non-Compete Agreement which protects KAHALA's business interests of:

A. Preventing Defendants from duplicating the business system and using trade secrets and confidential information to operate a substantially similar business for a competitor;

B. Preventing confidential information supplied to franchisees from being used by competitors of KAHALA;

C. Enforcing the In-Term Non-Compete protects the integrity of the KAHALA franchise system. Two hundred twenty four (224) Franchise Agreements for GSP are in jeopardy of being lost by KAHALA. If franchisees were to believe the Contract was not enforceable they would learn all of what the company has to offer and go out on their own. The system could collapse because Defendants have breached their Contract.

D. It is clear, that Defendants intend to compete against KAHALA because they have opened a substantially similar restaurant of a competitor of a food franchise company serving the same or similar food including items specifically restricted in the non-compete: Philadelphia style cheesesteak sandwiches, hand cut French fries, and fresh squeezed lemonade to the same casual clientele; and

E. The Franchise Agreement prohibits just the specific conduct, i.e., establishing any type of business substantially similar to that of a KAHALA GSP system establishment.

5. KAHALA has no adequate remedy at law and will suffer a continuing ongoing injury without the relief requested.

6. KAHALA is likely to succeed on the merits after trial in view of the execution

by the Defendants of the Franchise Agreements and the Covenants Not-To-Compete contained therein.

7. Plaintiff submits the accompanying Memorandum of Law in further support of this Motion.

WHEREFORE, KAHALA respectfully prays that this Court issue a Temporary Restraining Order, and following a hearing, issue a Preliminary Injunction:

- A. Ordering Defendants to cease operating the competing "Charley's" restaurant located at: 10 FC Yorktown Mall, Lombard, Illinois;
- B. Enjoin Defendants from conducting a substantially similar restaurant at the premises known as: 10 FC Yorktown Mall, Lombard, Illinois, or at any other location during the term of the Franchise Agreements pursuant to the Non-Compete provisions, ¶15 and ¶14.5 of the Franchise Agreements.
- C. In lieu of closing the business, Order the Defendants' competing restaurant to be transferred to a bona fide third party purchaser so that Defendant franchisees, their owner, Nabil Makhamreh, his family, any relatives, or any one connected with Defendants would not be associated with the competing business;
- D. Ordering Defendants to render an accounting to KAHALA of the gross receipts of its sales derived from the operation of the Charley's restaurant located at: 10 FC Yorktown Mall, Lombard, Illinois from store opening, to date; and
- E. Alternatively closing the competing restaurant the court should order Defendants to divest and disassociate themselves from the corporate business pursuant to the Franchise Agreements not be directly or indirectly connected with the competing business through officers, directors, shareholders, spouses, relatives or any business relationship to perform any service for, be an employee; owner, or to have any financial or beneficial interest based upon the revenues or profits of the competing business at the Yorktown Mall, Lombard, Illinois.

- F. An award from Defendants of the damages arising from Defendants' breach of the Franchise Agreement, attorney's fees, expenses, and costs KAHALA incurred in this action.
- G. Such other further and different relief as the Court deems just and appropriate.

Date: August 20, 2008

Respectfully submitted,

KAHALA FRANCHISE CORP.

ss//

Gregory J. Ellis

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